



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0082
TELEPHONE (916) 327-2455
FAX (916) 323-3387
www.boe.ca.gov

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Executive Director

December 4, 2000

Re: Personal Household Furnishings in Residential Care Facilities

Dear Mr. _____ :

Your September 27th, 2000 letter to Richard Johnson, requesting an interpretation of section 224 of the Revenue and Taxation Code as it applies to residential care facilities, was forwarded to the Legal Department for review. It is our opinion that the personal effects and household furnishings exemption of section 224 exempts any and all personal effects, household furnishing and pets owned by the licensee of the facility for his/her own use, but does not apply to personal property used solely in connection with the care of the residents.

Health and Safety Code sections 1566.2 and 1569.84 set forth identical provisions for exemption from local regulation of, respectively, general and elderly residential care facilities serving six or fewer persons. Both provisions state that such facilities "shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject."

Both sections also provide that "Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges and assessments to which other family dwellings of the same type in the same zone are likewise subject." Both sections are also followed by sections stating that "a residential facility ((or) a residential care facility for the elderly) which serves six or fewer persons shall be considered a residential use of the property for the purposes of this article. In addition, the residents and operators of such a ((or) the) facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article." (Health and Safety Code sections 1566.3 and 1569.85.)

The purpose of these exemptions is evidenced by the fact that they are both contained in "Local Regulation" articles in their respective Health and Safety Code chapters. In the one court decision

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discussing the legislative history of these provisions, McCaffrey v. Preston (1984) 154 Cal.App.3d 422, the court noted that, by proscribing local regulation of small residential care facilities, the legislature was seeking to create home-like environments for elderly and disabled people and to prevent local regulation that would impede the location of these facilities in residential neighborhoods. Because imposition of the local property tax would not frustrate that legislative policy the way regulatory fees and zoning restrictions would, the legislature clarified its intent in sections 1566.2 and 1569.84 by stating that it was not “forbid[ding] the imposition of local property taxes... and other fees, charges and assessments to which other family dwellings of the same type in the same zone are likewise subject.”

You view that sentence as encompassing only the property tax on the licensee’s real property because of the exemption for personal effects and household furnishings in Revenue and Taxation Code section 224 . However, as provided in section 224 and article XIII, section 3(m) of the California Constitution, owners of family dwellings are also subject to tax on their personal property if it is “held or used in connection with a trade, profession or business...” A residential care facility is a business for purposes of the tax code, despite being deemed a “residence” for purposes of local zoning ordinances. Therefore, assessment of personal property, including furnishings, owned by the licensee and used in connection with his or her licensed care facility is an assessment “to which other single-family dwellings are likewise subject.” (Health and Safety Code section 1566.2.) See enclosed annotation No. 630.0001, Ochsner Letter of September 16, 1987, and the August 21, 1987 letter referred to therein.

We would note, however, that the fact that a licensee operates a residential care facility out of his or her own home should not preclude application of the section 224 exemption for personal effects and household furnishings held for the licensee’s own personal use, such as personal bedroom furnishings.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or any public entity.

You are welcome to call me at (916) 327-2455 if you have any further questions on this matter.

Sincerely,

/s/ Susan Scott

Susan Scott
Tax Counsel

Enclosures [Annotation 630.0001, C 6/19/87]

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Cc: Mr. Richard Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Larry Augusta
Ms. Jennifer Willis, MIC:70